House Energy & Commerce Committee

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DAILY NEWS SUMMARY

Wednesday, May 28, 2008

Joe Barton


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Congress closer to requiring parity for mental health benefits

Controversial provision dropped from legislation, ratcheting up the chances of passage

By Jerry Geisel

May 27, 2008

House conferees last week dropped a contentious provision from legislation that would mandate parity for mental health care benefits, significantly increasing chances that a final agreement will be reached, though key obstacles remain, observers say.

In an offer to the Senate, House conferees deleted the provision, which was included as part of the parity bill the House passed last year, that would have required group health plans cover all mental health care conditions listed in the most recent edition of a diagnostic treatment manual of the American Psychiatric Assn.

That provision was vigorously opposed by employer groups, which said such a requirement would have delegated to a third party—the psychiatric industry—decisions about the services for which they would have to provide coverage. The requirement is not part of mental health benefits parity legislation passed by the Senate last year.

Some House members, such as Rep. Joe Barton, R-Texas, had warned earlier that the Senate would not accept having covered mental health conditions determined by the APA manual. Other observers said business support for mental health parity would vanish if the provision remained, eliminating any chance of the House and Senate agreeing on a compromise bill.

“It was a deal-breaker,” said Frank McArdle, a consultant with Hewitt Associates in Washington.

With the provision removed from the House version, the likelihood of a compromise is greater.

“It is an important progress point towards enactment,” said Neil Trautwein, vice president and employee benefits counsel with the National Retail Federation in Washington.

“It absolutely increases the chances that a compromise will be reached,” Mr. McArdle said.

Still, a final agreement on a compromise bill is by no means certain, observers say.

“There are still some contentious issues out there,” said James Gelfand, senior health policy manager at the U.S. Chamber of Commerce in Washington.

For example, under the House bill, the legislation would go into effect on Jan. 1, 2009, which business groups say is too short a time for employers to make the changes needed in their mental health care coverage. Under the Senate bill, the effective date for compliance would be the plan year that begins on or after Jan. 1 of the first calendar year after the date of enactment.

Other objectionable provisions in the House bill, business groups say, could make it more difficult for employers to ensure that only medically necessary mental health care services are provided.

Additionally, the Bush administration is concerned about language—not directly related to mental health care parity—that would impose new restrictions on physician-owned hospitals, which it believes could restrict patient choice of providers.

That House conferees agreed to drop mandating coverage for any mental condition in the APA disorder manual bodes well for resolution of other significant differences in the two bills.

“This shows that they (House conferees) want a bill, not an issue,” Mr. Trautwein said.

While significant differences remain, the core of the House and Senate bills is identical: requiring group health care plans to provide the same coverage for mental disorders as is provided for other medical conditions.

That would be a big change from current law enacted in 1996 that bars only discriminatory annual and lifetime dollar limits on coverage of mental disorders. Discrimination, though, is permitted in other ways. For example, it is legal for a health plan to limit how many annual outpatient visits for treatment of mental disorders it will cover, while imposing no comparable limit on other medical conditions.

Additionally, current law allows health plans to impose higher cost-sharing requirements for mental health care services than for other medical services.

The drive for parity legislation began soon after the limited 1996 bill was passed. But the effort didn’t get serious until Senate backers, most notably Sen. Edward Kennedy, D-Mass., of parity legislation began to work with business groups to develop a measure that they could support.

That effort bore fruit when several key business groups, including the American Benefits Council, the National Retail Federation and the U.S. Chamber of Commerce, announced their backing of the Senate bill.

Those groups, recognizing that Congress eventually was going to pass a bill, decided, following the 2006 congressional elections, to work with Senate advocates to make the legislation more to their liking.—*Business Insurance*

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Risk Policy Report

Breast Cancer Bill Gets Key NIH Support But Faces Senate Hurdle

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The National Institutes of Health (NIH), which has avoided comment on a bill to boost the agency's research on the environmental causes of breast cancer, now says it will withdraw its opposition to the measure if the House amends its version to reflect compromise language it helped negotiate in the Senate. However, despite the crucial NIH endorsement at a May 21 House hearing, the bill still faces dim prospects of passage due to continuing opposition by Sen. Tom Coburn (R-OK).

Coburn, a physician and fiscal conservative, has blocked debate on the measure on the Senate floor despite strong bipartisan support, over his opposition to the disease-specific nature of the legislation and because he believes the legislation is motivated by activist groups, rather than science. His office said May 22 that the senator continues to oppose the bill.

A Senate Democratic leadership source says while there are enough supporters to invoke cloture and overcome Coburn's hold, the source says that option is unlikely due to time constraints. The source describes Coburn's efforts as "unprecedented obstruction."

Coburn has said in the past that NIH agreed with him on the issue, particularly in opposing disease-specific research in general and with his contention that activist groups play too large a role in guiding research.

But at the May 21 hearing before the House Energy & Commerce Committee's health panel, NIH Epidemiology & Genetics Research Program Associate Director Deborah Winn indicated what appears to be first-time NIH neutrality toward the previously opposed measure. She said NIH does not oppose the Senate version and would withdraw its opposition to the House bill if lawmakers make similar amendments, including removing references to grant-funded research "centers" and adding a clause protecting the NIH peer-review process.

In her testimony, Winn acknowledged that breast cancer activist groups do play a large role in guiding the research process, but she said those efforts are important because the groups help to raise funds, collect data and recruit women for studies.

Coburn's opposition scuttled Senate floor debate April 21 on S. 579, a bill to establish a five-year, $200 million grant program for multidisciplinary research on environmental factors related to breast cancer, and he has opposed another bill to establish a national registry for Lou Gehrig's Disease over concerns the efforts are overly prescriptive.

The Senate version, which unanimously passed the Health, Education, Labor & Pension Committee Feb. 27, was amended with NIH input ahead of the vote to remove references to research "centers," which a bill supporter says were never intended to be "brick-and-mortar centers but rather . . . a collaboration of scientists and consumers from various disciplines and institutions."

Other changes include adding a clause to protect the NIH peer-review process, adding an NIH representative to a research panel established by the legislation and changing the procedures for how the Health & Human Services Secretary adopts the panel's recommendations.

However, the House panel's hearing was on H.R. 1157, which does not include the amended Senate language.

Winn said NIH would continue to object to that version, which she said, while well-intended, "could have the unintended consequences of narrowing the field of inquiry and prompting an unwise use of precious resources."

Winn agreed to a suggestion by Rep. John Shadegg (R-AZ) to meet with House members on compromise language, as NIH did with senators ahead of the committee vote.

Several lawmakers at the well-attended May 21 hearing described the bill as long-overdue. The bills have overwhelming bipartisan support, with 67 cosponsors in the Senate and 270 in the House.

Although a Democrat source says supporters would be able to overcome Coburn's opposition to proceed via cloture proceedings, "It would take more than half a week just to get to that point. The larger issue is the fact that Coburn, who has a hold on some 90 bills, is even slowing down the process on noncontroversial bills like this one. And that it's a pattern of unprecedented obstruction."

But some Texas Republicans at the House hearing echoed Coburn's concerns. Energy committee Ranking Member **Joe Barton** (TX) called the bill an earmark and argued that Congress should continue to fund NIH research through a single appropriations line item.

"I hope that we don't go back to the way we used to business [before the 2006 NIH Reform Act], where research funds go to the best-funded political activists," Barton said. -- Molly Davis

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John Dingell

E&ENEWS PM

1. CLIMATE: Dingell, Boucher offer ideas for curbing emission bill's costs

(05/27/2008)

Darren Samuelsohn, *E&ENews PM* senior reporter

Two influential House Democrats floated ideas today on how they will write global warming legislation without damaging the U.S. economy.

House Energy and Commerce Chairman John Dingell of Michigan and Energy and Air Quality Subcommittee Chairman Rick Boucher of Virginia released the **fourth**
in a series of white papers previewing challenges they face in crafting a climate bill that sets mandatory limits for the first time on U.S. emissions of heat-trapping greenhouse gases.

CLIMATE CHANGE SPECIAL REPORT

As in previous papers, Dingell and Boucher take pains to avoid definitive statements about their upcoming bill, but they signal in some areas where they want to go on the record.

For example, the lawmakers promise to allow companies to bank an unlimited amount of their unused emission allowances from one year to the next as a cushion against price spikes.

They also will welcome offsets, albeit without comment on whether they will place a limit on how many soil sequestration, methane capture and forestry projects can be used in a given year to keep down the costs of the U.S. climate policy.

Several other options are also on the table to deal with cost concerns, Dingell and Boucher said, including use of a presidentially appointed commission that keeps close tabs on the new carbon market with the power to address rising costs by changing some of the program's main compliance requirements. A major global warming bill headed next week to the Senate floor has such a provision.

In their paper, Dingell and Boucher outline the proposed commission's pros and cons, concluding that it is far from certain whether it would be effective at dealing with unexpectedly high compliance prices while not crimping the program's ultimate environmental goal of reducing the threats from climate change.

"It would depend, at least in part, on how the board interpreted its charge to 'prevent significant harm to the U.S. economy,'" Dingell and Boucher wrote. "It does appear, however, that the board is designed to meet the goal of ensuring that someone can 'fix' the program if something goes wrong and Congress does not meet its responsibility to step in."

Safety valves

Dingell and Boucher address several others kinds of "safety valve" provisions that policy experts suggest for dealing with high compliance costs.

One approach would be to set a price ceiling on carbon credits, a primary feature in a different cap-and-trade bill introduced last summer by Sens. Jeff Bingaman (D-N.M.) and Arlen Specter (R-Pa.).

Dingell and Boucher said the price ceiling approach "is particularly well-suited" to helping industry see what its costs will be in any given year. But they caution that it does not promise emission reductions at the pace suggested by scientists and also may stymie incentives to develop and deploy new energy technologies.

Another option centers around holding emission requirements steady if compliance prices cross a predetermined threshold, also known as a "circuit breaker." This method would help keep prices down if low- and zero-carbon energy technologies are not ready as anticipated. However, it comes with shortcomings that include no guarantees of price certainty, and it also forces Congress or a federal agency to make a tough choice about what price to set for the circuit breaker.

Dingell and Boucher urge members of the House Energy and Commerce Committee to keep a number of other provisions in mind. Those include longer compliance periods than one year and the use of an allowance price floor that gives technology developers a minimum level of certainty.

The congressmen also caution that any cost assessments linked to climate policy do not typically include a corresponding figure on what happens if policymakers did nothing to stem greenhouse gases. Some factors to consider: increased risks on U.S. coasts from erosion and sea level rise, decreased water supplies in the West and decreased agricultural crop productivity.

To date, Dingell and Boucher have not had much luck in fulfilling a pledge to see global warming legislation signed into law before President Bush leaves office. They have released three previous white papers that deal with other big-picture questions associated with writing a climate bill.

In recent weeks, Boucher has blamed the slowdown on opposition from Rep. Joe Barton (R-Texas), a climate change skeptic and the ranking member of the House Energy and Commerce Committee. Barton counters that he is in the minority and has no control over the agenda. If Dingell and Boucher wanted to move a bill, they could, Barton says.

Neither Democratic congressman made any promises today on when they will actually introduce a climate bill or mark it up. Instead, they released a **memo**
promising additional hearings on the costs of a new global warming policy, but a committee spokesman said nothing has been scheduled yet.

Click here for the Dingell-Boucher paper.

Click here for the Dingell-Boucher memo.

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Risk Policy Report

Democrats Roll Out Broad Chemical Risk Management Reform Bill

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Democrats concerned about inadequate toxic chemical risk assessment and management policies have introduced legislation laying out broad reforms based on a strict new European law, the culmination of months of activists' calls for change to a 30-year-old system they consider broken and lawmakers' confrontations with EPA officials during congressional hearings at which Democrats threatened legislative action.

Sen. Frank Lautenberg (D-NJ) and Reps. Hilda Solis (D-CA) and Henry Waxman (D-CA) introduced the Kid-Safe Chemical Act May 20, a bill designed to require EPA to conduct "safety determinations" on chemicals in commerce in the United States, with the first 300 determinations due by 2012.

Despite the late date in the congressional session, Lautenberg expects the bill to move through the normal process, a staff source says, because of the support it has in both houses and the nature of the issue. "It is something everyone can relate to," the source says of the bill. "In that sense, the bill markets itself. The bill propels itself forward."

Lautenberg's inspiration is the European Union's (EU) Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) program, the source says, and the senator "wanted to take a leadership role on this issue" in the U.S. Lauded by many environmentalists and public health advocates, REACH requires companies to submit risk information about chemicals before they can be produced or imported in certain quantities in the EU. Supporters contrast REACH with the U.S. Toxic Substance Control Act (TSCA), which they consider ineffective. The chemical management legislation that governs how EPA regulates the manufacture and importation of toxic chemicals does not provide adequate information about the risks chemicals in commerce present to public health and the environment, critics argue.

"At last we have a serious effort to bring U.S. chemicals policy into the 21st century," said Richard Denison, a senior scientist with the Environmental Defense Fund, in a letter of support released with the new bill. "By modernizing the Toxic Substances Control Act, this legislation would close the gap between the policies of the United States and those of many other developed countries."

Lautenberg wanted to introduce the bill and start the committee process before the Senate goes out for its summer recess, the source says. The bill has been assigned to Sen. Barbara Boxer's (D-CA) Environment & Public Works Committee. Boxer expressed her support during an April 29 oversight hearing on EPA's toxic chemical policies, while also warning EPA that if Congress didn't see action from EPA and industry, lawmakers would legislate changes to chemical management policy (Risk Policy Report, May 6, p14).

EPA's pesticides and toxics chief Jim Gulliford urged the committee at that hearing to give EPA time to improve its chemical testing program voluntarily. EPA is rolling out Chemical Assessment and Management Program (ChAMP), through which it intends to complete risk characterizations of thousands of chemicals by 2012. The deadline is mandated by an international agreement with Canada and Mexico. The agency intends to use these characterizations to prioritize chemicals for complete risk assessments. Critics have assailed the program as unlikely to produce results because it relies on industry voluntarily providing hazard information without regulatory enforcement.

Lautenberg is also "confident" of his bill's chances in the House, the staff source says, despite the abrupt resignation last month of former Rep. Al Wynn (D-MD). Wynn chaired the energy subcommittee that has jurisdiction over the House version of the bill, H.R. 6100. Rep. **John Dingell** (D-MI), chairman of the House energy committee, is also a supporter, the source says.

"We wouldn't introduce it unless we were committed to getting it passed. There are a number of legislative strategies we are pursuing," the source says, adding that Lautenberg and supporters will map out a plan after getting input on the bill through hearings. When the same legislation was introduced in 2005, it stalled in those committees, then led by Republicans.

Another part of Lautenberg's strategy this time around is amassing a broad base of activist support and ensuring Congress is aware of the issue, and both have been achieved, the source says. The bill's announcement was accompanied by letters of support from environmentalists, health care practitioners and public health advocates. "When babies come into this world pre-polluted with hundreds of dangerous industrial chemicals already in their blood, it's clear that the regulatory system is broken," said Ken Cook, president of Environmental Working Group, in one of the letters of support.

Recent public attention to the ubiquitous plastic ingredients pthalates and Bisphenol A, which are suspected of causing hormone-disrupting effects, have led to increased awareness on the Hill, the source says. During a recent hearing in the Senate Commerce Committee on plastic additives, Sens. John Kerry (D-MA) and Mark Pryor (D-AR) expressed support for TSCA reform (Risk Policy Report, May 20, p12).

As before, the legislation would amend TSCA to address EPA's backlog of untested chemicals by requiring chemical manufacturers to certify the safety of each chemical substance to the agency as well as providing "all reasonably available information" that the agency does not already have. The manufacturers would have to update that information every three years.

The American Chemistry Council (ACC), an industry association, "believes the bill includes helpful provisions" that would allow EPA to "provide confidential business information to state governments useful for their chemical management programs and provisions that aim to reduce the use of animal testing where science based and practicable," according to an ACC statement.

But ACC also argues the legislation "contains some impractical solutions that may not produce the benefits intended by the bill's authors. "For example, the bill proposes a 'no harm' standard for all chemicals in commerce regardless of use or potential exposure," according to the statement. "Manufacturers go to great lengths to assure their products are safe for their intended use."

The bill would also require EPA to establish an Interagency Science Advisory Board on Children's Health and Toxic Substances; determine whether manufacturers of chemicals on a priority list meet relevant safety standards; create market incentives to encourage the development of safer, 'green chemistry' alternatives to existing chemicals; and create a toxicity and chemical-use database. -- Maria Hegstad

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Energy/Environment

The New York Times
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ROCK 'N ROLL WILL NEVER DIE

May 28, 2008

New Climate Report Foresees Big Changes

By ANDREW C. REVKIN

The rise in concentrations of carbon dioxide in the atmosphere from human activities is influencing climate patterns and vegetation across the United States and will significantly disrupt water supplies, agriculture, forestry and ecosystems for decades, a new federal report says.

The changes are unfolding in ways that are likely to produce an uneven national map of harms and benefits, according to the report, released Tuesday and posted online at climatescience.gov.

The authors of the report and some independent experts said the main value of its projections was the level of detail and the high confidence in some conclusions. That confidence comes in part from the report's emphasis on the next 25 to 50 years, when shifts in emissions are unlikely to make much of a difference in climate trends.

The report also reflects a recent, significant shift by the Bush administration on climate science. During Mr. Bush's first term, administration officials worked to play down a national assessment of climate effects conducted mainly during the Clinton administration, but released in 2000.

The new report, which includes some findings that are more sobering and definitive than those in the 2000 climate report, holds the signatures of three cabinet secretaries.

According to the report, Western states will face substantial challenges because of growing demand for water and big projected drops in supplies.

From 2040 to 2060, anticipated water flows from rainfall in much of the West are likely to approach a 20 percent decrease in the average from 1901 to 1970, and are likely to be much lower in places like the fast-growing Southwest. In contrast, runoff in much of the Midwest and East is expected to increase that much or more.

Farmers, foresters and ranchers nationwide will face a complicated blend of changes, driven not only by shifting weather patterns but also by the simultaneous spread of nonnative plant and insect pests.

Some invasive grasses, vines and weeds, for example, do better in higher temperatures and carbon dioxide concentrations than do crops and preferred livestock forage plants.

Corn and soybean plants are likely to grow and mature faster, but will be more subject to crop failures from spikes in summer temperatures that can prevent pollination, said one of the authors, Jerry L. Hatfield, a plant physiologist with the United States Department of Agriculture, in a conference call with reporters.

David E. Schimel, a lead author and director of a federal system of ecological monitoring stations, said in the call that mitigating emissions in the long run was still important even though not much could be done to change the short-term climate picture.

The 203-page report, "The Effects of Climate Change on Agriculture, Land Resources, Water Resources and Biodiversity in the United States," is a review of existing studies, including last year's voluminous quartet of reports from the Intergovernmental Panel on Climate Change. It is part of a continuing assessment of lingering questions related to global warming that was initiated in 2003 by Mr. Bush.

The report did not evaluate how the risk faced by farmers, water-supply managers and others might be reduced if they changed practices or crop and livestock varieties to adjust to changing conditions.

But several authors said that over all, the pace and nature of some of the looming changes would present big challenges in many of the country's fastest-growing regions.

The West will not only face a dearth of water, but also large shifts in when it is available. Water supplies there will be transformed by midcentury, with mountain snows that provided a steady flow of runoff for irrigation and reservoirs dwindling. That flow will be replaced by rainfall that comes at times and in amounts that make it hard to manage, the report and authors said.

The report also emphasized that the country's capacity to detect climate shifts and related effects was eroding, as budgets and plans for long-term monitoring of air, water and land changes — both on the ground and from satellites — shrank.

Richard Moss, a vice president of the World Wildlife Fund who previously coordinated federal climate reports under both the Clinton and Bush administrations, said the findings "highlight the urgency of the climate change problem" and provided important new support for action both to limit emissions and adapt to inevitable changes.

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Report Details Effects of Climate Change Across U.S.

By Juliet Eilperin
Washington Post Staff Writer
Wednesday, May 28, 2008; A02

Global warming is already affecting the nation's forests, water resources, farmland and wildlife, and will have serious negative consequences over the next 25 to 50 years, according to a report issued yesterday by the federal government.

The scientific assessment by the U.S. Climate Change Science Program, which was commissioned by the Agriculture Department and carried out by 38 scientists inside and outside the government, provides the most detailed look in nearly eight years at how climate change is reshaping the American landscape. The report, which runs 193 pages and synthesizes a thousand scientific papers, highlights how human-generated carbon dioxide emissions from burning fossil fuels have already translated into more frequent forest fires, reduced snowpack and increased drought, especially in the West.

Anthony C. Janetos, director of the Joint Global Change Research Institute of the University of Maryland and the Pacific Northwest National Laboratory, said the document aims to inform federal resource managers and dispel the public's perception that global warming will not be felt until years from now.

"They imagine all these ecological impacts are in some distant future," said Janetos, one of the lead authors, who noted that many animals and plants have shifted their migratory and blooming patterns to reflect recent changes in temperature. "They're not in some distant future. We're experiencing them now."

The document concludes that Americans must face the fact that many of these changes are locked in even if the country takes significant steps to cut emissions in the coming decades.

"Climate change is currently impacting the nation's ecosystems and services in significant ways, and those alterations are very likely to accelerate in the future, in some cases dramatically," the report says. "Even under the most optimistic CO2emission scenarios, important changes in sea level, regional and super-regional temperatures and precipitation patterns will have profound effects."

Richard Moss, vice president and managing director for climate change at the advocacy group World Wildlife Fund, said in an interview that the report represents "the very first upfront acknowledgment from the administration that we are already experiencing climate change impacts."

As recently as July 2007, the administration submitted a report to the United Nations that omitted any discussion of how global warming will affect wildfires, heat waves, agriculture or snowpack.

Moss, who led the U.S. Climate Change Science Program coordination office during both the Clinton and Bush administrations, praised the program for producing the analysis, which is part of a long-delayed series of official climate reports. "At the same time," he added, "we all need to be looking at how the administration now intends to use the results of this information, because it really is worrisome."

The researchers said that of 1,598 animal species examined in more than 800 studies, nearly 60 percent were found to have been affected by climate change.

In addition, the number and frequency of forest fires and insect outbreaks are "increasing in the interior West, the Southwest, and Alaska," while "precipitation, stream flow, and stream temperatures are increasing in most of the continental United States" and snowpack is declining in the West.

The Agriculture Department, the study's lead sponsor, issued a statement yesterday highlighting some of the report's findings for farmers, noting that the higher temperatures mean that grain and oilseed crops will mature more rapidly but face an increased risk of failure and "will negatively affect livestock."

"The report issued today provides practical information that will help landowners and resource managers make better decisions to address the risks of climate change," said Agriculture Department chief economist Joseph Glauber.

Agriculture Department spokesman William Hohenstein said the department is already incorporating climate change into all of its national forest management plans, and it is drafting a strategic research plan aimed at coping with global warming. "We will use this as a springboard in terms of identifying the questions we're going to focus on" for the strategic plan, he said of the report.

Peter Backlund, another of the report's lead authors and director of research relations at the National Center for Atmospheric Research, said in an interview that the Departments of Agriculture and Interior and other federal agencies will be tested by changing climate conditions on both public and private land.

"This is going to be a big challenge for agencies that haven't traditionally been big players in climate," Backlund said, adding the government's monitoring systems can chart major changes but are insufficient to serve as a climate warning system. "We lack the ability to identify the more subtle changes that are happening that could be much larger in the future. . . . We're pulling this information from systems that weren't designed to look at that."

The report predicts that some of the nation's most valued landscapes may change radically in the near future as precipitation and weather patterns continue to shift.

"Management of Western reservoir systems is very likely to become more challenging as runoff patterns continue to change," it states. "Arid areas are very likely to experience increased erosion and fire risk. In arid ecosystems that have not co-evolved with a fire cycle, the probability of loss of iconic, charismatic megaflora such as Saguaro cacti and Joshua trees will greatly increase."

One of the greatest challenges land managers will face over the next few decades, Janetos said, is uncertainty.

"You can't really assume anymore the climate is going to be familiar or similar to what we've seen over the 20th century," he said. "We're moving into new territory."

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May 28, 2008

EDITORIAL

The Senate’s Chance on Warming

For seven long years, President Bush has refused to confront the challenge of climate change and provide the leadership that this country and the world needs to reduce greenhouse gases and avoid the destructive consequences of global warming.

The Senate, and all three presidential candidates, have a chance to provide that leadership. Next week, the Senate is scheduled to take up a bill sponsored by John Warner, the Virginia Republican, and Joseph Lieberman, the Connecticut independent, that seeks aggressively to reduce emissions from all sectors of the economy.

Mr. Bush, predictably, opposes the bill. Add that to the slim Democratic majority and the complexity of the bill itself, and the chances of getting 60 filibuster-proof votes are modest at best. Even so, a majority vote would create positive momentum for the next Congress and send a strong signal to the country and the world that help on this issue is on the way.

For that reason, it is crucial for John McCain, Barack Obama and Hillary Rodham Clinton to show up and vote for this bill. All are on record as supporting mandatory cuts in greenhouse gases. A pressing campaign schedule is no excuse for not being counted on an issue this important to the nation’s future.

The Senate last addressed climate change in 2003 when it cast 43 votes in favor of a bill sponsored by Mr. McCain and Mr. Lieberman. This bill is even more ambitious. It calls for a 70 percent reduction in emissions by 2050 — requiring, in turn, a huge change in the way the country creates, delivers and uses energy. It imposes a price on carbon to make sure that happens. It also creates a compelling array of incentives for new and cleaner technologies and offers ways to combat long-neglected problems like deforestation.

Since that 2003 vote, the arguments for action have only gotten stronger. Mr. Bush has left a deep-seated impression that mandatory cuts in carbon dioxide would bankrupt the country or at the very least severely damage it by driving energy prices through the roof.

Every serious study shows that this is simply not true and that a well-designed, market-based program could yield positive economic gains — greater energy efficiency, technological innovation and reduced reliance on foreign oil. The same studies also make clear that the costs of inaction will dwarf the costs of acting now. The bill’s proponents must make sure that the economics of this debate are framed in a positive way.

The scientific case for action, strong five years ago, is even more persuasive now. Authoritative assessments from the Intergovernmental Panel on Climate Change, among other studies, have left little doubt that the world is heating up, that man-made emissions are largely responsible and that swift action is necessary to avoid widespread environmental damage.

Mr. Bush can no longer plausibly deny the science. What he continues to resist is the need for a full-throated response. The Senate can usher in a new era of American leadership when it convenes next week.

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E&ENEWS PM

4. OIL AND GAS:
Gasoline marketers target speculators as Dems continue oversight *(05/27/2008)*

Ben Geman, *E&ENews PM* senior reporter

A petroleum industry trade group is launching a campaign aimed at tightening regulation of oil futures markets, alleging excessive speculation is a major factor behind high energy prices.

The Petroleum Marketers Association of America has set up a new Web site that allows visitors to e-mail lawmakers about the issue. The group represents petroleum wholesalers and retail gasoline stations.

Oil prices have more than quadrupled over the past five years and reached a trading high of more than $135 per barrel last week before falling back. Oil settled below $129 per barrel on the New York Mercantile Exchange today.

The new PMAA campaign comes as congressional Democrats are increasingly blaming speculative trading for putting upward pressure on prices. Several bills would place new restrictions on trading, while the Senate Commerce Committee is holding a hearing next Tuesday on federal oversight of energy markets.

PMAA wants Congress to approve recent proposals that would tighten limits on U.S.-based trading on overseas exchanges, including the IntercontinentalExchange's London-based energy futures market.

Dan Gilligan, president of the trade group, said addressing these foreign-based exchanges remains unfinished business even as lawmakers, in the recently enacted farm bill, partially closed the "Enron loophole" that had exempted electronic exchanges from U.S. Commodity Futures Trading Commission (CFTC) oversight.

"But the foreign-markets loophole remains open, and speculators are still able to use it to drive prices beyond where they should be in a normal, free-market situation. We are asking Congress to circle back and close the foreign-market loophole as well," Gilligan said in a statement today.

A proposal this month by Democratic Sens. Carl Levin of Michigan and Dianne Feinstein of California requires CFTC to ensure that trading from U.S. terminals on foreign exchanges carries reporting requirements and speculative trading limits comparable to those of U.S. exchanges (*E&E Daily*, May 9).

The bill, which applies to energy commodities delivered in the United States, also requires foreign regulators to provide CFTC with information about speculative trading. The Levin-Feinstein bill is also included in a broader energy bill that Senate Democrats introduced this month. Another provision of that broader bill would increase the amount of money that CFTC requires traders to guarantee, called the "margin requirement."

Bingaman letter

In a **letter**
to CFTC today, Senate Energy and Natural Resources Chairman Jeff Bingaman (D-N.M.) said the commission needs to examine speculation more thoroughly and needs better data.

"I remain concerned that the commission's assertions to date -- discounting the potential role of speculation in driving up oil prices -- have been based on a glaringly incomplete data set," Bingaman wrote to acting CFTC Chairman Walter Lukken. The letter notes limited CFTC data about trades on foreign exchanges and other areas.

But Energy Secretary Samuel Bodman told a House panel last week that he does not believe speculative trading is a major factor behind high prices and instead pointed to rising demand coupled with stagnant production growth.

"The facts are that in the year 2004, we sopped up all the available surplus capacity in the system. That has been the issue and it is the issue today," Bodman said Thursday during an appearance before the House Select Committee on Energy Independence and Global Warming.

But Michael Greenberger, a top CFTC official under President Clinton, today offered a starkly different view.

"We are not in a supply-demand problem," he said in an interview on C-SPAN. "There is an appearance of a supply-demand problem aided by investment banks, hedge funds, commercial banks, oil companies and wealthy individuals manipulating these markets that are completely unpoliced by the federal government except in very rare instances."

He added later, "There are fancy investors sitting in their dark rooms with computer screens flickering, with suspenders and Gucci loafers, who are engaging in phony sales, that are unpoliced, that drive the price of this energy up."

Click here to read Bingaman's letter.

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May 28, 2008

EDITORIAL

End Runs on Medicaid

A federal district judge has slapped down a sneaky attempt by the Bush administration to impose an onerous Medicaid regulation despite the clear intent of Congress that it be deferred. Once again, the administration has been caught in a flagrant attempt to ignore the will of Congress and unilaterally chart its own path.

In a decision issued last week, Judge James Robertson of the Federal District Court in Washington ruled that the administration had overstepped its authority last year with a maneuver "deliberately designed to outfox a clear directive of Congress." The administration was seeking to evade the annoying fact that Congress had enacted a one-year moratorium on the administration's efforts to alter — and in the process cut — Medicaid reimbursements to public hospitals and nursing homes.

Congress had already passed, but President Bush had not yet signed, a broad funding bill that included the moratorium when the secretary of the Department of Health and Human Services rushed through a typo-ridden rule for "emergency display" on May 25, 2007, the very day the moratorium took legal effect. The rule, which had been in preparation for some time, was officially published a few days later. That shifty maneuver was too much for Judge Robertson to swallow. He found ample reason to overturn the rushed-through rule as a violation of Congressional intent.

This year, another battle is brewing over whether to defer seven proposed Medicaid rules that would clarify and cut reimbursements to various health care providers. The proposals are complex and would have a devastating effect on some health care institutions and state budgets; they deserve vigorous debate, preferably after a new Congress and administration take office.

Fortunately, both houses of Congress have passed bills, by veto-proof margins, that would impose a one-year moratorium on the rules and pay for the delay with offsetting cuts in less-urgent health programs. The moratorium was folded into a war-funding bill that faces a possible veto from President Bush because it includes domestic spending that he opposes. Congress will need to reconcile the Senate and House versions of the bill and make it as difficult to veto as possible.

Meanwhile, the secretary of health and human services has unilaterally deferred implementation of two of the most controversial rules until Aug. 1 in an attempt to negotiate some compromises with Congress. That leaves the other five rules either in effect or vulnerable to enactment unless Congress moves quickly to impose a moratorium.

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Lawmakers Question Duplicative Retiree Drug Coverage

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By Stephen Barr
Wednesday, May 28, 2008; D04

More than 200,000 federal retirees are enrolled in two government-sponsored prescription drug programs, and the duplicative coverage may cost more than $200 million annually, according to two House members.

The federal retirees are probably paying $60 million in unnecessary premiums, and taxpayers are providing $140 million in subsidies, Reps. *Henry A. Waxman* (D-Calif.) and *Danny K. Davis* (D-Ill.) wrote in a letter to Bush administration officials.

The prescription drug benefits are provided to federal retirees through the Federal Employees Health Benefits Program, or FEHBP, and Medicare Part D. Congress directed Medicare to coordinate benefits with other prescription drug plans, but Medicare and FEHBP "have not acted to require or ensure effective coordination of the drug benefits," Waxman and Davis wrote.

As a result, private insurance companies offering Medicare Part D coverage "appear to be reaping a $200 million windfall annually, paid for by the retirees and American taxpayers," they wrote.

Waxman chairs the House Oversight and Government Reform Committee, and Davis is chairman of the House federal workforce subcommittee. Both have jurisdiction over federal retirement benefits, including health-care coverage provided to civil service and postal retirees.

Their letter, dated May 12, went to *Linda M. Springer*, director of the Office of Personnel Management, and *Kerry N. Weems*, the acting administrator for the Centers for Medicare and Medicaid Services.

A spokeswoman for the OPM said the agency would not comment because a response was being prepared. CMS also is developing a response, a spokesman said.

In the letter, Waxman and Davis said briefings provided by the two agencies raised questions about whether taxpayer money was being wasted. Officials at the agencies, in discussions with the House committee, said there was almost no coordination between the two programs, the letter said.

For most federal retirees who are 65 and older, Medicare serves as the first payer on insurance claims. When Medicare added a prescription drug benefit in 2003, OPM officials said federal retirees didn't need to enroll in Part D and pay extra for prescription drug coverage because FEHBP benefits were better or equivalent to the coverage provided by Part D.

The OPM also said FEHBP and Medicare would coordinate drug benefits, but Waxman and Davis wrote, "this does not appear to be happening."

Intern Program Proves Popular

The Federal Career Intern Program has become one of the most popular hiring programs in the government, data in a new Office of Personnel Management report show.

From fiscal 2004 through 2007, the intern program brought in 45,975 people to the government. The new hires usually work as interns for two years, and those who successfully complete their training program are converted to full-time, permanent civil service employees.

In 2004, the OPM said 6,783 interns were hired by agencies. That number jumped to 16,755 in 2007.

Most managers and personnel officials told the OPM that they used the intern program for entry-level jobs and found it an efficient way to make job offers. The regular federal hiring practices are often faulted for being too cumbersome and for taking too long, discouraging many job applicants.

But the intern program has drawn criticism from the National Treasury Employees Union, which filed a lawsuit last year alleging that the program undermines the government's commitment to fair and open competition for federal jobs.

The new data confirm that the intern program is being used to get around rules that require merit-based hiring, the union contended yesterday.

The union, which represents employees at Customs and Border Protection, the IRS and the Federal Deposit Insurance Corp., said the intern program was being used at those agencies to fill many entry-level openings.

The OPM report shows that agencies are moving to "more relaxed standards," said Colleen M. Kelley, the union president. "This presents a danger that hiring decisions become based on factors other than a candidate's qualifications and that weakens the merit-based federal civil service."

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Childhood Obesity Rates Stop Rising

Advertisement

Numbers Stall but Remain High; Experts Wary of Declaring a Turnaround

By Rob Stein
Washington Post Staff Writer
Wednesday, May 28, 2008; A03

The obesity epidemic may have peaked among U.S. children, halting a decades-long trend of inexorably expanding waistlines among the nation's youngest and most vulnerable, federal health officials reported yesterday.

A new analysis of the most recent data collected by an ongoing government survey, considered the most authoritative on the subject, detected the first sign since the 1980s that the proportion of 2-to-19-year-olds who are overweight may have stopped rising, the National Center for Health Statistics reported.

"It looks like it's leveling off," said Cynthia L. Ogden, an epidemiologist whose analysis is being published in today's issue of the Journal of the American Medical Association. "It could finally be stabilizing."

More data will be needed, however, to confirm that the data represent a turnaround in the long upward trend and not just a temporary pause, Odgen noted. And even if the epidemic has peaked, the pace at which young people are becoming overweight remains alarmingly high. Moreover, those who are already overweight face a future fraught with possible serious health problems.

"It's too soon to uncork the champagne," said David S. Ludwig, an expert on childhood obesity at Children's Hospital Boston who co-wrote an editorial accompanying the new research. "We're not out of the woods by any stretch. Even if the rates don't go up any more, they are so high that the full impact of the childhood obesity epidemic will continue for the next few decades."

Still, several experts said the data offer the first glimmer of hope that the country could be starting to push back against a major public health threat.

"We may be turning a corner with respect to obesity," said William H. Dietz, director of the Division of Nutrition, Physical Activity and Obesity at the federal Centers for Disease Control and Prevention in Atlanta. Dietz noted that the data are consistent with earlier numbers about adults nationwide and with data on children from a handful of states. "I'm hopeful we're at a turning point," he said.

The analysis could not determine why the rate may have stalled, but experts said it could be because of a variety of factors, including rising awareness of the problem among parents, schools, community groups, and government and privately funded programs.

"This lets us know that the epidemic is not an unstoppable epidemic and gives us hope our collective work can reverse it," said Risa Lavizzo-Mourey, president and chief executive of the Robert Wood Johnson Foundation, a private nonprofit group that helps fund anti-obesity programs. "It tells us that when we all work together -- parents and schools, government, voluntary organizations, industry -- we can make a difference."

The proportion of children who are obese has been rising steadily since about 1980, tripling from about 5 percent to more than 15 percent. Overweight children are prone to a host of serious health problems, including asthma, diabetes and heart disease.

Ogden and her colleagues analyzed data collected by the National Health and Nutrition Examination Survey, a nationally representative database tracking obesity and other major health issues. The study focused on the most recent data -- height and weight measurements collected from about 8,165 children and adolescents as part of the 2003-2004 and 2005-2006 surveys. There was no statistically significant change, the researchers found.

Taken together, the weight of 31.9 percent of the youths held steady at or above the 85th percentile for their age, which is considered overweight; 16.3 percent were at or above the 95th percentile, the definition of obese; and 11.3 percent were at or above the 97th percentile for their age, which classifies them as very obese.

Moreover, when the researchers compared the two periods with surveys dating back to 1999, they found no significant increase over the entire period, strengthening their confidence that the trend had leveled off.

"After two time points it looked pretty much the same, but you need more time points to determine a trend, so it's hard to be sure. But after multiple time points that look flat, you may be cautiously optimistic that it is leveling off," Ogden said.

The trends held steady for males and females and across all racial and ethnic groups, though older children, along with blacks, Hispanics and other minorities, continued to have higher obesity rates.

"I don't want to minimize the problem," Ogden said. "It hasn't gone away. But this may be a first necessary step; it perhaps is starting to go down."

Experts offered a variety of possible explanations for the shift.

"I don't think we can pinpoint to any one thing that is responsible for the plateau, but I think it could be a gathering of a variety of strategies," Dietz said.

Barry M. Popkin, who heads the Interdisciplinary Obesity Center at the University of North Carolina at Chapel Hill, said he is skeptical that government programs are responsible. One possible influence, he said, is the flagging economy.

"When economic times are difficult, we always slow things down on lots of things, like eating," Popkin said.

Another possibility is that there is a limit to how many children are genetically predisposed to becoming obese, and they have already become so.

"It may be that we've reached a point where the proportion of the population genetically susceptible to obesity is already obese," said Susan Yanovski, co-director of the office of obesity research at the National Institute of Diabetes and Digestive and Kidney Diseases.

Some researchers, however, are skeptical that the epidemic has peaked.

"The government definitely wants us to believe we're making progress in the obesity epidemic. We on the ground feel that's ridiculous," said Robert H. Lustig, a professor of clinical pediatrics at the University of California at San Francisco. "We who are taking care of patients are seeing bigger and bigger problems."

Not only are doctors continuing to see more overweight children, but the proportion who are severely overweight appears to be increasing, several experts said.

"More and more children are overweight, and those coming in are much heavier than they were," said Melinda S. Sothern of the Louisiana State University Health Sciences Center in New Orleans.

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Sony, Cable Firms Agree To Eliminate Set-Top Boxes

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By John Dunbar
Associated Press
Wednesday, May 28, 2008; D02

The set-top box, a necessary appendage for millions of cable television customers for decades, is moving toward extinction.

A leading television manufacturer, Sony Electronics, and the National Cable and Telecommunications Association said yesterday they had signed an agreement that would allow viewers to rid themselves of set-top boxes yet still receive advanced "two-way" cable services, such as pay-per-view movies.

In most cases, cable viewers also could dispose of another remote control because they could use their TV's control rather than one tied to the set-top box.

The agreement marks a significant meeting of the minds between cable companies and one of the world's dominant makers of consumer electronics. The two industries have been feuding for a decade about how best to deliver cable service to customers while allowing them to buy equipment of their own choosing.

Sony agreed to use the cable industry's technology in its sets as soon as possible but could not say when the first such televisions might appear in stores.

The agreement is between Sony and the nation's six largest cable companies: Comcast, Time Warner Cable, Cox Communications, Charter Communications, Cablevision Systems and Bright House Networks. The six companies serve more than 82 percent of cable subscribers.

Cable subscribers are generally locked into renting a set-top box from their provider if they want more than the most basic cable TV service.

More than a decade ago, Congress ordered the cable industry to allow outside electronics makers to compete for the boxes. The industry responded by developing the "cable card." The cards are inserted into competing boxes, televisions or other devices to unscramble the cable signal.

The cards have been the source of frequent customer complaints and never proved popular. In addition, sets can receive signals from only the cable company, not vice versa. Subscribers are unable to use two-way features such as video on demand, onscreen channel guides and cable-company-provided digital video recorders.

Under the new system, customers can continue to attach their own devices -- such as TiVo digital video recorders, according to the NCTA.

Customers would still need to get a cable card from their provider, but the agreement is designed to end technical glitches and allow the availability of two-way services.

The cable association said it was hopeful other electronics manufacturers would agree to use the same technology.

The industry wants to head off action by the Federal Communications Commission to impose a two-way standard.

"Every member of the FCC has encouraged the parties to resolve these highly technical issues in private-sector negotiations," said Kyle McSlarrow, president of the NCTA. Yesterday's announcement means they have done so, he added.

The FCC declined to comment on the agreement.

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